

# In the Court of Appeals of the State of Alaska

**Jeremy Bienek,**

Appellant,

v.

**State of Alaska,**

Appellee.

Court of Appeals No. **A-13328**

## **Order**

Request for Review of Clerk's Intention  
to Enter Judgment for Costs of  
Appointed Attorney

Date of Order: **8/26/2021**

Trial Court Case No. **3AN-15-11144CI, 3AN-11-09541CR**

The Appellant, Jeremy Bienek, filed a felony merit appeal, challenging the superior court's dismissal of his application for post-conviction relief. In *Bienek v. State*, Alaska App. Memorandum Decision No. 6958 (July 7, 2021), this Court vacated the superior court's order dismissing Bienek's application for post-conviction relief and remanded the case to the superior court for further proceedings.

Mr. Bienek was represented by counsel at public expense in this appeal. Under Alaska Appellate Rule 209(b)(5), at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, the Clerk of the Appellate Courts is directed to "enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court." Because Mr. Bienek was represented by court-appointed counsel in this appeal, because Mr. Bienek's appeal was a felony merit appeal, and because Mr. Bienek's conviction was not reversed, the Appellate Court Clerk's Office notified Mr. Bienek that it intends to enter judgment against him in the amount of \$1,500.00 for the cost of counsel. *See* Alaska Appellate Rule 209(b)(6).

Mr. Bienek objects to the Clerk's notice. Because Mr. Bienek objects to the Clerk's intent to enter judgment against him, he is entitled to judicial reconsideration

of the Clerk's decision. *See* Alaska Appellate Rule 503(h)(2)(A).

Appellate Rule 209(b)(5) and (6) require criminal defendants whose convictions are not reversed on appeal to reimburse to the government a portion of the cost of the attorneys who represent them at public expense. In his opposition to the entry of judgment for the cost of appellate counsel, Mr. Bienek contends that (1) he is incarcerated and has a low income, and (2) that this Court vacated the superior court's decision and reinstated his post-conviction relief application in the superior court.

The Court recognizes that incarcerated appellants are often indigent, but indigence is not grounds for waiver of the requirement to pay the cost of appointed counsel. Nearly all persons with appointed counsel are indigent, but the rule applies unless the conviction is reversed. Similarly, although this Court vacated the superior court's dismissal of Mr. Bienek's post-conviction relief application and remanded the matter to the superior court, Mr. Bienek's conviction was not reversed.

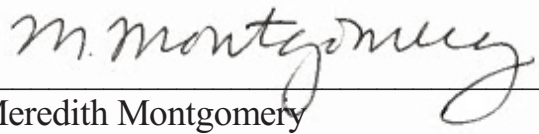
Because this Court did not reverse Mr. Bienek's conviction in this appeal, Mr. Bienek is required to reimburse to the government a portion of the cost of the attorney who represented him at public expense. Accordingly, the decision of the Appellate Court Clerk to enter a \$1,500.00 judgment against Mr. Bienek for the cost of counsel under Appellate Rule 209(b) is **AFFIRMED**.

That said, if Mr. Bienek's conviction is reversed in his reinstated post-conviction relief application, he may file a motion in this Court asking to have the judgment for the cost of counsel under Appellate Rule 209(b) vacated, and to have any funds collected as a result of that judgment returned to him.

Entered at the direction of Chief Judge Allard.

*Jeremy Bienek v. State* - p. 3  
File No. A-13328 - August 26, 2021

Clerk of the Appellate Courts



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Meredith Montgomery

cc: Jeremy Bienek

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